

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 131 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JEVATIBAI W/O JAGESHWAR HARJIVAN BHATT & 2

Versus

TEJSI BHAGVANDAS BHALIA & 5

Appearance:

MR DD VYAS for Petitioners

MR JR NANAVATI for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/03/2000

ORAL JUDGEMENT

#. The petitioner is the original defendant against whom the respondent no.1 had filed the suit being Regular Civil Suit No.7 of 1975 in the Court of the learned Civil Judge (JD) Khambhalia. The case of the plaintiff in the said suit was that the plaintiff is the owner of the

property bearing House no.66 ward no.1, in Raja-Pada locality of Khambhalia town. The suit premises consists of two rooms and a kitchen on the first floor and the same was in occupation of the defendant-tenant at a monthly rent of Rs. 5/- . According to the plaintiff the defendant was in arrears of rent for more than 6 months and therefore, he is required to be evicted . Eviction decree is also sought for on the ground of bonafide requirement of the suit premises by the landlord. That prior to the filing of the suit the landlord had given the defendant-tenant notice under section 12(2) of the Bombay Rent Act but he failed to comply with the same. Ultimately, the aforesaid suit was filed for possession of the suit premises on the ground of arrears of rent and bonafide requirement of the suit premises by the landlord.

#. The defendant resisted the suit by filing written statement at exh.11. It was contended that he was ready and willing to pay the rent. That the plaintiff was not the owner of the suit premises. That he was not in arrears of rent for more than six months. The defendant also denied the claim of bonafide requirement.

#. From the pleadings of the parties the Trial Court framed various issues at Exh.18. The Trial Court, after considering the evidence, both oral and documentary and after hearing the arguments of both the sides dismissed the suit of the plaintiff on the ground that the plaintiff had no right to file the suit as according to the Trial Court, he was not the landlord of the suit premises within the meaning of sections 12 and 13 of the Bombay Rent Act. The Trial Court fixed the standard rent at Rs.55/- p.m. inclusive of taxes.

#. Being aggrieved by the said judgment and order of the Trial Court dated 31.8.78 in Regular Civil Suit No. 7 of 1975, the plaintiff preferred appeal before the District Court, Jamnagar being Regular Civil Appeal No.99 of 1978.

#. The learned District Judge, Jamnagar by his judgment and order dated 21.10.1980 allowed the appeal and the suit for possession was decreed. Aforesaid judgment and order of the learned Appellate Judge is impugned in this Revision Application.

#. At the time of hearing of this Revision Application it was argued by Mr. D.D.Vyas learned advocate for the petitioner that the learned Appellate Judge has not decided the case of the defendant on merits. According to him, the Trial Court had given the finding as regards

arrears of rent against the defendant-tenant but the Appellate Court negtived the finding of the Trial Court as regards the maintainability of the suit and came to the conclusion that the suit was maintainable. Mr. Vyas further argued that the Appellate Court should have examined the merits of the case whether the tenant was ready and willing to pay the rent or not and whether the tenant was protected under section 12(1) of the Bombay Rent Act. As against this Mr. J.R.Nanavati learned advocate for the respondent plaintiff submitted that since the tenant had not filed any cross objections, it was not necessary for the Appellate Court to examine the case on merits because the finding of the Trial Court that the tenant was in arrears of rent, was not challenged further and in any case the tenant having failed to file the cross objections, could not have said anything on merits before the Appellate Court. At this stage the observations of the learned Appellate Judge is required to be considered. The Appellate Court came to the conclusion while deciding point no.2 that the Trial Court was not justified in dismissing the suit on the ground that the plaintiff had no right to file the suit. Therefore, said finding of the Trial Court was reversed by the learned Appellate Judge. So far as the question of arrears of rent is concerned, the learned Appellate Judge came to the conclusion that the tenant has not challenged the finding of the Trial Court that he was in arrears of rent for a period for more than six months on the date of the notice and on the date of the filing of the suit and that therefore, when the Court came to the conclusion that the suit is not barred, the appeal was required to be allowed. The learned Appellate Judge therefore, has not considered the case of the tenant on merits so far as arrears of rent is concerned inasmuch as according to the learned Appellate Judge, the tenant had not challenged the said finding of the Trial Court. The point which requires consideration is whether it is open for the defendant to sustain the decree of the Trial Court on merits in absence of filing of cross objections. According to Mr. Vyas the suit was dismissed in entirety and a decree was accordingly passed and therefore, there was no occasion for the defendant to file cross objections. In my view the contention is required to be accepted for the simple reason that without even filing cross objections against a particular finding, it is open for the defendant to argue that the decree of the Trial Court still be sustained on any other grounds and therefore it is always open for the defendant to argue for sustaining the decree of the Trial Court even in absence of cross objections against a part of the decree or against any a particular finding. At this stage a

reference is required to be made to the judgment of the Supreme Court dated September 14, 1999 rendered in Civil Appeal No. 6036 of 1990 in the case of Ravinder Kumar Sharma vs. State of Assam & ors.. In this judgment the Supreme Court has held in para 14 as under:

"In our view, the opinion expressed by Mookerjee.J Calcutta High Court on behalf of the Division Bench in Nishambhu Jena's case and the view expressed by U.N.Bachawat, J in Tej Kumar's case in the Madhya Pradesh High Court reflect the correct legal position after the 1976 amendment. We hold that the respondent-defendant in an appeal can, without filing cross objections attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose of sustaining the decree to the extent the lower court had dismissed the suit against the defendant-respondents. The filing of cross objections, after the 1976 amendment is purely optional and not mandatory. In otherwords, the law as stated in Venkata Rao's case by the Madras Full Bench and Chandre Prabhuji's case by this court is merely clarified by the 1976 amendment and there is no change in the law after the Amendment.

The respondents before us are, therefore, entitled to contend that the finding of the High Court in regard to absence of reasonable and probable cause or malice (upon which the decree for pecuniary damages in B & C schedules was based) can be attacked by the respondents for the purpose of sustaining the decree of the High Court refusing to pass a decree for non-pecuniary damages as per the A schedule. The filing of cross objections against the adverse finding was not obligatory. There is no resjudicata. Point no.1 is decided accordingly in favour of respondent defendants.

#. In that view of the matter even if there were no cross objections, it was open for the otherside to contend that the decree of the Trial Court can still be sustain on other grounds. In the circumstances, the Appellate Court is required to consider whether the decree for possession should have been passed or not on the ground of arrears of rent and the matter is required to be remanded to the learned Appellate for deciding the aforesaid point on merits. Accordingly, the judgment and

order of the learned Appellate Judge is set aside. It is clarified that the point regarding maintainability of the suit is concluded as per the order of the learned Appellate Judge. The matter is remanded back to the learned Appellate Judge with a direction to decide the aforesaid point on merits and in accordance with law. The appeal is restored to the file of the learned Appellate Judge. However, the parties are directed to appear before the learned Appellate Judge on 25.4.2000 for the purpose of getting the date of hearing of the appeal and it will not be necessary for the learned Appellate Judge to issue fresh summons to the parties for the purpose of securing their presence. Subject to the aforesaid observations the Revision Application is allowed. Rule made absolute to the aforesaid extent. No order as to costs.

(P.B.Majmudar.J)

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